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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,775	01/03/2002	Bruce Elliot Kramer	TREADMILL I	8566
7590	07/27/2006		EXAMINER	
BRUCE E. KRAMER 9112 CHERBOURG DR. POTOMAC, MD 20854			CROW, STEPHEN R	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/033,775

Applicant(s)

KRAMER ET AL.

Examiner

Steve R. Crow

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Drawings

As stated in the previous office action:

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the two pairs of rollers and the pair of endless belts must be shown or the feature(s) canceled from the claim(s). **No new matter should be entered.**

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 6-12,18-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The pair of endless belts and other structure claimed in claims 7-12 and 18-24 are not described and shown, as originally filed, by the Disclosure.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5 and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen.

Moon et al discloses all of applicant's claimed invention except for the specific widths claimed.

Derksen teaches the well recognized use of treadmills for training horses as shown in figure 3. In view of this well recognized treadmill use, it would have been obvious to one skilled in the art to enlarge the Moon et al treadmill to any desirable width such as 45 inches wide for accommodating any desired animal for exercise purposes.

An enlarged treadmill width of 45 inches would be desired to accommodate extremely large persons or animals and is considered a design choice which carries no patentable weight. As to the method claims 13-18, such a sized treadmill could be used for any desired function , such as accommodating plural animals.

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Response to Arguments

2. Applicant's arguments filed 5-10-06 have been fully considered but they are not persuasive.

The Examiner has reiterated the response from the previous office action, and supplemental remarks follow:

1- The 112 first paragraph rejection still stands.

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The original Specification does not support an element 54 which is linear and which extends orthogonally away from a middle portion of the handlebar 46. The new matter handle 54 is not integral with the handlebar 46 and handle 54 is not the "middle portion", rather the handlebar 46 possesses a middle portion which cannot be seen due to the display. Handle 54 is a separate handlebar.

The figure 2 disclosure is also fatal. It failed to teach many things: Are the treadmill belts equal sized? How are the extra pair of rollers supported on the frame? Applicant has introduced a central support between the pair of treadmills for supporting the rollers. This structure lacks supporting the Specification.

The adage "a picture is worth a thousand words" is applicable here. In most cases, a drawing (picture) is more detailed than the written disclosure (word).

2- The Moon et al, modified supra, rejection meets the structural limitations. With respect to the method of using the device, the examiner has stated that "such a sized treadmill could be used for any desired function, such as accommodating plural animals". Plural animals would include two children or small adult people, hence, some of the claims are met without modifying the Moon et al device.

3- Applicant has merely taken Moon's figure 1 treadmill and made it wider. Note that all of the numeral markings are the same. Where a change in size of a prior art reference merely represents a change in degree, and not a change in kind, such a change is a design consideration within the skill of the art.

SUPPLEMENTAL EXAMINER'S REMARKS

In response to applicant's remarks on page 3 of the amendment filed 5-10-06, the examiner contends that Figure 2 contains new matter with respect to the handlebar element 54. The examiner acknowledges that the Specification does state the general concepts of using a handle 54 and the use of pairs of treadmill belt and roller assemblies. As the examiner has attempted to explain previously, although there is a degree of specificity in the Specification, there are several elements shown in the newly submitted figure 2 which do not necessarily follow from the Specification as originally filed. These elements are considered new matter, as stated *supra*. The disclosure suggests a hypothetical arrangement of elements, which is fine for determining equivalents, but when that arrangement is being claimed the structure must be shown in the Drawings. It isn't a case of whether one skilled in the art would understand that the handlebar would extend perpendicularly and linearly from the middle of the main handle, nor that the extra pair of rollers can be supported on the frame in the manner shown in figure 2 but not shown in figure 1. This structural arrangement isn't necessarily "readily envisioned by one skilled in the art", contrary to applicant's assertion stated on line 1 of page 5.

In response to applicant's remarks on pages 5-6 of the amendment filed 5-10-06, the examiner contends that the combination of references applied are proper and meet the claim limitation.

3. As the examiner stated previously: Applicant has merely taken Moon's figure 1 treadmill and made it wider. Note that all of the numeral markings are the same.

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Where a change in size of a prior art reference merely represents a change in degree, and not a change in kind, such a change is a design consideration within the skill of the art.

Derksen is considered to be from an analogous art. Both Moon and Derksen are treadmills having treadmill features which include rollers and belts and therefore inherently belt widths. Both are used to exercise mammals for gaiting type exercise.

The examiner contends that the Kelsey et al treadmill width, when viewed with respect to the relative dimensions of the use and the treadmill, as shown in figure 5, appears approximately about 40-45 inches wide.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve R. Crow whose telephone number is 703-308-3398. The examiner can normally be reached on Reg:8:30-6;Off First Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sc



STEPHEN R. CROW
PRIMARY EXAMINER
ART UNIT 332